

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MATTHEW CORZINE,

Case No. 3:13-cv-00119-MMD-VPC

Petitioner,

ORDER

v.

RENEE BAKER, et al.,

Respondents.

The Court directed petitioner to show cause why the Court should not dismiss this action as untimely. Order (dkt. no. 8). Petitioner has submitted a response (dkt. no. 11). After considering the response and the claims in the petition to which the response refers, the Court is not persuaded. The Court will dismiss this action.

I. START OF THE PERIOD OF LIMITATION

Petitioner argues that his judgment of conviction did not become final for the purposes of 28 U.S.C. § 2244(d)(1)(A), until the Nevada Supreme Court issued its remittitur from the appeal of the denial of petitioner's motion to withdraw his guilty plea. That remittitur issued on February 19, 2013. Consequently, petitioner argues, the petition, which the Court received on March 11, 2013, was well within the one-year period of limitations.

Petitioner misstates the effect that a motion to withdraw the guilty plea has upon the period of limitations. Such a motion is a collateral attack upon a judgment of conviction, and thus it is eligible for tolling under 28 U.S.C. § 2244(d)(2). See *Wall v. Kholi*, 131 S. Ct. 1278 (2011). However, the motion is not part of the proceedings on

1 direct review, and it does not affect the finality of the judgment of conviction. The Court
2 has noted that the judgment of conviction became final on September 4, 2007, with the
3 expiration of the time to appeal the amended judgment of conviction. Petitioner filed the
4 motion to withdraw his guilty plea on December 29, 2011. By that time, the one-year
5 period of § 2244(d)(1) had expired, and there was nothing left to toll. *Jiminez v. Rice*,
6 276 F.3d 478, 482 (9th Cir. 2001).

7 **II. ACTUAL INNOCENCE**

8 Next, petitioner argues that he is actually innocent. Actual innocence can excuse
9 operation of the statute of limitations. *McQuiggin v. Perkins*, 133 S. Ct. 1924, 1928
10 (2013). “[A] petitioner does not meet the threshold requirement unless he persuades
11 the district court that, in light of the new evidence, no juror, acting reasonably, would
12 have voted to find him guilty beyond a reasonable doubt.” *Id.* (quoting *Schlup v. Delo*,
13 515 U.S. 298, 329 (1995)). “[A]ctual innocence’ means factual innocence, not mere
14 legal insufficiency.” *Bousley v. United States*, 523 U.S. 614, 623 (1998). In a case
15 involving a guilty plea, the evidence must show actual innocence of the charges
16 dropped in exchange for the plea, as well as the charges to which the defendant
17 pleaded guilty. *Id.* at 624.

18 The Court has constructed petitioner’s argument for actual innocence from his
19 response (dkt. no. 11), ground 1 of his petition (dkt. no. 9), and excerpts of the transcript
20 of his sentencing hearing attached to the petition. Petitioner was mentally ill, and he
21 was housed in a treatment facility that was limited to youth. He was released from that
22 facility when he became too old, and he joined the Army to find discipline and treatment.
23 His fellow soldiers were scared of him, tied him to a chair, gagged him, and beat him up.
24 He called a detective, who had been working with him on a case of his stepfather
25 sexually abusing him, and told the detective that he had been raping his wife. This
26 confession was untrue, but petitioner was hoping that the detective would arrest him
27 and get him out of the Army. Petitioner realized that he needed somebody to
28 corroborate his story. He told his wife that he had sexual relations with her best friend,

1 and she went to the detective with a complaint that he had been raping her. Petitioner
2 was arrested and charged with many counts of sexual assault. Counsel told the court
3 that he was ready to go to trial, but that petitioner would need to testify. Counsel was
4 afraid that petitioner would make a mistake in his testimony, that the jury would find him
5 guilty, and that petitioner would go to prison for the rest of his life. Counsel instead
6 persuaded petitioner to plead guilty to five counts of attempted sexual assault in the
7 hopes that the court would put petitioner on probation. The court declined.

8 The first problem with this argument for actual innocence is that it is not reliable.
9 Counsel's explanation of events is bizarre, with a series of inexplicable and self-
10 defeating decisions by petitioner. Furthermore, petitioner's statement in the petition that
11 his fellow soldiers beat the confession out of him is contrary to counsel's explanation
12 that petitioner went to a detective with a lie to keep soldiers from beating him because
13 of his mental illness. Inconsistencies such as these make the argument unreliable.

14 The second problem is that petitioner has presented nothing new. This is not a
15 case in which petitioner had evidence of actual innocence that was available to him, or
16 even in which petitioner had evidence of actual innocence within his knowledge. The
17 evidence of petitioner's actual innocence is his own recollection of events. Through his
18 counsel, he presented this evidence to the state district court in an argument for that
19 court to give him probation. The state district court was not persuaded and sentenced
20 petitioner to prison. Petitioner chose not to testify and not to subject his testimony to
21 cross-examination. Now, after his strategy did not obtain the desired results, and after
22 all these years, petitioner wants to try another strategy. The Court cannot say that there
23 was a miscarriage of justice when it was petitioner's decision not to present that
24 evidence at trial.

25 III. EQUITABLE TOLLING

26 Petitioner argues that the Court should equitably toll the statute of limitations
27 because of his efforts to obtain the transcripts of his proceedings. "[A] 'petitioner' is
28 'entitled to equitable tolling' only if he shows '(1) that he has been pursuing his rights

1 diligently, and (2) that some extraordinary circumstance stood in his way' and prevented
2 timely filing." *Holland v. Florida*, 560 U.S. 631, 130 S. Ct. 2549, 2562 (2010) (quoting
3 *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). Petitioner notes that between the
4 finality of his judgment of conviction and the commencement of his state habeas corpus
5 petition, he had filed in the state district court motions for the transcripts of the
6 proceedings. The state district court granted the first motion, but petitioner still did not
7 obtain the transcripts. The state district court denied the subsequent motions. These
8 motions do not qualify for statutory tolling pursuant to 28 U.S.C. § 2244(d)(2) because
9 they were not petitions for post-conviction or other collateral review. As far as equitable
10 tolling is concerned, the Court is not convinced that the lack of transcripts prevented
11 petitioner from timely filing a federal habeas corpus petition. None of the grounds in the
12 petition require petitioner to refer to transcripts. Ground 1, a claim of actual innocence,
13 is based upon his own recollection of events before he was arrested. Ground 2, a claim
14 that counsel gave poor advice to plead guilty, is not based on any court hearing.
15 Ground 3 is a claim that the trial court erred in accepting petitioner's plea of guilty while
16 petitioner maintained his innocence. As with ground 1, this ground is based largely
17 upon petitioner's recollection of events before he was arrested.¹ Grounds 4 and 5 are
18 based upon errors in petitioner's state-court motion to withdraw his plea. That motion
19 was filed after he tried to obtain transcripts. Consequently, the lack of transcripts did
20 not prevent petitioner from filing a timely federal habeas corpus petition.

21 IV. CAUSE AND PREJUDICE

22 Petitioner argues that cause and prejudice exist to excuse the operation of the
23 statute of limitations. Petitioner describes a procedure that is inapplicable to untimely
24 federal habeas corpus petitions. A person can use cause and prejudice to argue why a
25 federal court should reach the merits of a procedurally defaulted claim. A claim is
26 procedurally defaulted in federal court if the decision of the state court regarding that

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28 ¹Pleading guilty while maintaining innocence is constitutional and an acceptable
strategic decision. See *North Carolina v. Alford*, 400 U.S. 25 (1970).

1 claim rested on a state-law ground that is independent of the federal question and
2 adequate to support the judgment. *Coleman v. Thompson*, 501 U.S. 722, 730-31
3 (1991). In petitioner's case, there is no procedural default. The Court has not
4 determined that it cannot reach the merits of petitioner's claims due to state-court
5 applications of state law. Rather, the Court has determined that the federal habeas
6 corpus petition is untimely because of application of federal law, 28 U.S.C. § 2244(d).
7 Other than showing that the Court's calculations are incorrect, and petitioner has not,
8 petitioner can be excused from filing an untimely petition only by showing that equitable
9 tolling is warranted or that he has a good claim of actual innocence. The Court has
10 already rejected both those arguments.

11 **V. MISCARRIAGE OF JUSTICE**

12 Petitioner argues that the Court should excuse the untimeliness of the petition
13 because otherwise a miscarriage of justice would occur. This argument duplicates
14 petitioner's argument that he is actually innocent. The Court already has rejected that
15 argument.

16 **Other motions**

17 Petitioner has submitted a motion for appointment of counsel (dkt. no. 7) a
18 motion for leave to conduct discovery (dkt. no. 6), a supplemental motion (dkt. no. 12),
19 and a motion for appointment of an independent medical expert (dkt. no. 13). The Court
20 denies these motions because the Court is dismissing this action.

21 **VI. CERTIFICATE OF APPEALABILITY**

22 To appeal the denial of a petition for a writ of habeas corpus, Petitioner must
23 obtain a certificate of appealability, after making a "substantial showing of the denial of a
24 constitutional right." 28 U.S.C. §2253(c).

25 Where a district court has rejected the constitutional claims on the merits,
26 the showing required to satisfy §2253(c) is straightforward: The petitioner
27 must demonstrate that reasonable jurists would find the district court's
28 assessment of the constitutional claims debatable or wrong. The issue
becomes somewhat more complicated where, as here, the district court
dismisses the petition based on procedural grounds. We hold as follows:
When the district court denies a habeas petition on procedural grounds

1 without reaching the prisoner's underlying constitutional claim, a COA
2 should issue when the prisoner shows, at least, that jurists of reason
3 would find it debatable whether the petition states a valid claim of the
denial of a constitutional right and that jurists of reason would find it
debatable whether the district court was correct in its procedural ruling.

4 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221 F.3d 1074,
5 1077-79 (9th Cir. 2000). The only procedural ruling that jurists of reason would find
6 debatable or wrong is this Court's determination that petitioner has not made a
7 persuasive claim of actual innocence. Jurists of reason also might find that petitioner
8 states a valid claim in ground 2, that his counsel provided ineffective assistance in
9 persuading petitioner to plead guilty. Petitioner's four other grounds do not state valid
10 claims of denials of constitutional rights. Ground 1 is a free-standing claim of actual
11 innocence, and the Supreme Court has never held that such a claim is addressable in
12 federal habeas corpus. *McQuiggin v. Perkins*, 133 S. Ct. 1924, 1928 (2013). Ground 3
13 is a claim that the state district court abused its discretion in accepting petitioner's plea
14 when petitioner maintained his innocence. Such a plea does not violate the constitution.
15 See *North Carolina v. Alford*, 400 U.S. 25 (1970). Grounds 4 and 5 claim that the state
16 district court and the Nevada Supreme Court, respectively, erred in their rulings on
17 petitioner's motion to withdraw his plea. "[A] petition alleging errors in the state post-
18 conviction review process is not addressable through habeas corpus proceedings."
19 *Franzen v. Brinkman*, 877 F.2d 26, 26 (9th Cir. 1989). Given that there is one ground
20 that possibly states a valid claim, the Court will issue a certificate of appealability on the
21 question of actual innocence.

22 It is therefore ordered that petitioner's motion for appointment of counsel (dkt. no.
23 7), motion for leave to conduct discovery (dkt. no. 6), supplemental motion (dkt. no. 12),
24 and motion for appointment of an independent medical expert (dkt. no. 13) are denied.


25 It is further ordered that this action is dismissed with prejudice as untimely. The
26 Clerk of the Court shall enter judgment accordingly.

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1 It is further ordered that a certificate of appealability is granted on the question
2 whether this Court was correct in its ruling that petitioner has not made a showing of
3 actual innocence to excuse operation of the statute of limitations.

4 DATED THIS 30th day of January 2014.

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7 MIRANDA M. DU
8 UNITED STATES DISTRICT JUDGE
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